Supreme Court, U.S.
FILED
06-41 JUL 3 2006
OFFICE OF THE CLERK

No.

SUPREME COURT OF THE UNITED STATES

GERALDINE MILLS, M. D.

Appellant,

v.

PARA-CHEM, d/b/a/ PARA-CHEM SOUTHERN, INC.,

Appellee

On Petition For Writ Of Certiorari
To The United States Court of Appeals
for The First Circuit

PETITION FOR A WRIT OF CERTIORARI

July 6, 2006

Geraldine Mills, M.D.
191 Squantum Drive
Warwick, Rhode Island 02888
401-463-8433

Jeffrey Gladstone,Esq
Michael Gamboli,Esq
180 South Main St
Providence RhodeIsland
401-861-8200

QUESTIONS

Are there substantial due process questions as to render it unconstitutional under the Due Process and Equal Protection Clause of the Fourteenth Amendment under 28 U.S.C. 1257

Is Due Process denied when the record below is totally devoid of evidence necessary to determine the facts on the record.

When does statute of limitations begin to accrue in instant case 1) when "injury" took place not just on July 19, 1996 but every day after that date until physician informs her of "residual vapors" 2) with immediate symptoms dizziness, headache or later chemical induced abdominal porphyria, loss of libido or even later chronic latent separate and distinct injury of immune disregulation and TILT (toxicant induced lowered tolerance) to items as certain perfumes, fabric softeners, room and car deodorizers 3) does it accrue from July 19, 1996 with mere speculation as to what "yellow substance was

Does the "discovery rule" well established in Rhode Island law apply here when

1) plaintiff did not know for fact she was injured on July 19, 1996 or would never have reentered the office; did not know of chronic injury until some time in 2001 staying in next office , 2) plaintiff did not know of the injury-causing wrongful conduct (exercising all reasonable diligence by a) asking outright was glue used, requesting answer to this question in interrogatories, in testimonial) until September 5-6, 2001, 3)as in Wilkinson and Lee "opportunity to become cognizant of injury and cause"

Does the fact "discovery rule" has only been applied to cases of medical malpractice, real estate, and drug product liability cases in Rhode Island mandate that this rule cannot be applied

in other situations even if pertains to that other situation

1) when Court admits that there has never been such a case in Rhode Island regarding carpet and glue

2) was due process denied this plaintiff if "discovery rule" was used in prominent Rhode Island lead case many years after injuries resulted

3) as in Renaud can this be considered a "certain narrowly defined factual stituation

Should defendant's action go unnoticed when it claims to be manufacturing and distributing a water based product when

1) in fact it contains many VOC's that are toxic and carcinogenic

2) is in violation of Federal Hazardous Labeling Act

3) and has a potentially harmful affect on all public consumers

4) as in Renaud "party asserting statute of limitations attempts fraud, misrepresentation to conceal existence of cause of action

Did defendant in this case conceal its own identity (conceal composition of MPG) or did defendants (not inclusive of John Doe) in Mills vs Beaulieu, State Sales, Robert Weisberg conceal Para-Chem's identity or did all conceal Para-Chem's identity; did State Sales know MPG contained VOC's

1) State Sales wrote MPG is nontoxic and water based

2)Should Defendants in Mills vs Beaulieu et al be held totally responsible for defective product, fraudulent claim MPG has "0" VOC's; is not this case about different defendant, different product, different injury not before litigated

What influence does the case Mills vs Beaulieu, State Sales, Robert Weisberg, John Doe Cement and case Mills vs Nahabedian have with regards to bringing complaint against Para-Chem for its product Magnum Plus Gold (MPG)

1) Was Due Process denied Mills when Justice denied all affirmative evidence of September 5-6, 2001, expert witnesses, and trial

2) as in Arnold denial of discovery process for factual investigation a) not allowing experts advantage of having affirmative results, to testify with new knowledge MPG not water based violating Federal regulations regarding CAS identification b)barring Kenneth Reed, PhD IH as expert (previously testified in carpet injury cases with same model [peer reviewed] never before denied all the while denying him use of evidence c) labeling Toxicologist Joseph Regna, M.D. " learning impaired" all the while denying him use of evidence

Is it in violation of Plaintiff's Due Process to have decisions of other cases submitted making collateral estoppel superfluous

Did Judicial abuse of discretion foster need for this claim being brought when a Rule 50 b motion was not overturned (as is usual practice in RI); defendants, subpoena of subcontractors, product MPG were all concealed all not in the interest of judicial economy

Is the acceptance of causation a matter of law

When do the benefits of design not outweigh the risks of danger inherent in the design of a product (Is not improper design or lack of warning a factor in strict liability with reasonableness of Defendant's conduct)

Would plaintiff been able to proceed in prior case for both acute "symptoms" as injury and for risk of prospective harm (If permitted to seek recovery in prior case only for present injury would plaintiff be barred on the ground of having split cause of action from bringing a claim against a defendant in the future should a separate and distinct injury actually be sustained

TABLE OF CONTENTS

	Page
Questions Presented	i-iii
Table of Contents	iv
Table of Authorities	v-x
Table of Appendices	xi
Introductory Paragraph and Opinions Below	1
Jurisdiction	1-5
Statement of the Case	5-9
Argument- Reasons for granting of appeal	10-28
Decision below conflicts with Precedents	28-29
Conclusion	29-30

TABLE OF AUTHORITIES

	Page
Adams vs Johns-Manville Sales Corp 727 F.2d 533 5th Cir 1984	30
Ager v Jane C. Stormont Hospital & Training School for Nurses 622 F.2d 496 (10th Cir 1980)	27
Allen vs U.S. Id at 902	20,21
Amb Found Research J. 487, 496-503 (1982)	19
Anderson v W.R. Grace & Co supra 628 F. Supp 1219 1226 D. Mass 1986	
Anello and Uhlman vs Shaw 2001	23
Arnold vs R.J. Reynolds Tobacco Co, 956 F. Supp at 114-117 (D.R.I. 1997)	29
Barker vs Lull Engineering Co (1978) 20 C. 3d 413, 143 Cal. Rptr 225	27
Basko vs SterlingDrug Co 588 F. Supp 247, 405-429 (D. Utah 1984)	21
Betrand vs Johns-Manville Sales Corp 529 F. Supp 539,544 (D.Minn 1982)	19
Beshada vs Manville Sales Corp 90 N.J. 191, 447 A.2d 539 (1982)	28
Bichler v Eli Lilly & Co 55 NY 2d 571, 450 N.Y.S. 2d 776, 436 N.E. 2d 182 (1982)	26
Boldt vs Jostens, Inc 261 N.W.2d at 93	18
Bratford vs Susquehanna Corp 586 F. Supp 14, 18 (C.D. Colo.1981)	30

Bragg vs Shoppers World, Inc 102 RI 8, 227 A.2d 582 (1967) 4

Conway vs Blackfeet Indian Developers, Inc 669 P.2d 225 (Mont 1983) 18

Cox Broadcasting Corp v Cohn 420 US 469, 482-483 (1975) 1

Cramer vs Morrison, 88 Cal. App. 3d 873, 153 Cal Rptr 865 (1979) 25

DiGiacomo vs Franzen 680 F.2d 515 (7th Cir 1982) Court No. 3 25

Eagle Picher Industries Inc vs Cox 481, So.2d 517 Fla App 1985 30

FDIC vs O'Flahaven 857 F. Supp 154, 157-58 D.N.H 1994) 3

Feldman vs Lederle Laboratories 97 N.J. 429,479 A.2d 374 1984 28

Ferebee vs Chevron Chemical Corporation 736 F.2d 1529,1534 D.C. Cir 1984 16,17

Fiske vs Kansas 274 US 380 385-86 (1927) 15

Frye vs U.S, 293 F. 1013 (D. C. Cir . 1923) 23

Garner vs Louisiana 386 US 157, 163 (1961) 2

Gordon vs Para Chem 1985 5,27

Graver Mfg Co v Linde Co 336 U.S. 271,275 (1949) 2

Haines vs Kerner 404 US 519, 520 92 S. Ct 594 (1972) 4

Hart v Mazur 903 F. Supp 277, 279 (D.R.I.1995) 29

In Re Japanese Electronic Products 723 F.2d 238 276-279 3rd Cir 1983 23

Jackson vs Johns-Manville Sales Corp 781 F.2d 394 5th Cir 1986 Id at 520, 521 11

Jenkins v United S[illegible], 307 F.2d 637, 646 (D.C. Cir 1962) 24

Kehm vs Proctor & Gamble Co 580 F.Supp 890 N.D. Iowa 1982) 20

Koller vs Richardson-Merrell, Inc No. 80-1258 (D.D.C. Filed May 19, 1980) 20

Kyles Vs Whitley 514 U.S. 419,422 (1995) 13

Laswell vs Brown 524 F. Supp 847 (W.D. Mo. 1981) 11

Martinez-Ferrer vs Richardson-Merrell 164 Cal Rptr 591-595 (2d Dist 1980) 10

McEven vs Ortho 270 Or. 375,528 P.2d 522 (1974) 19

McGovern Toxic Substances Litigation in the 4th Cir, 16 U. Richmond L. Rev. 247,257 (1982) 11

Mink vs Univ Chicago 460 F Supp 713 (Ill. 1978 11

Napue vs Illinois 360 US 264 271- 72 (1959) 15

O'brien vs Muskin Corp., 94 N.J. 169,463 A.2d 298 1983 28

Parker vs Employers Mutual Liability Insurance C0 444 S.W. 2d 43 (Tex 1969) 19-20

Parklane Hosiery v Shore 439 U.S. 322 (1979) 26

Perreira vs Dow Chemical Co Inc 181 CAL Rptr 364 Cal App 1982 15

Plummer vs Abbott Labs 568 F. Supp 920,927 D.R.I. 1983 11

Renaud vs Sigma Aldrich Corp 662 A.2d 713-715 R.I. 1995 29

Rheingold vs E R Squibb & Sons, Inc. No. 74- 3420 S.D.N.Y Oct 8, 1975) 11

Rodi vs Ventetuolo 941 (1st Cir 1991) 4

Salem vs U.S. Lines Co 370 U.S. 31 (1962) 23

Sentilles vs InterCaribbean Corp 361 US 107 (1959) 26

Sindell vs Abbott Laboratories 26 Cal 3d at 605, 607 F.2d at 933, 163 Cal Rptr at 141 26

Sterling vs Velsicol Chemical Corp. F.2d (6th Cir 1988) 23

Summers vs Tice 33 Cal. 2d 80 (1948) 21

Thompson vs City Louisiana 362 U.S. 199 (1960) 2

United States vs Aluminum Co of America, 148 F.2d 416,446 (2d Cir. 1945) LL. Hand, J.) 3

United States vs Garland 991 F. 2d 328,332 (6th Cir 1993) 3

United States vs Jones 29 F.3d 1549, 1553 (11th Cir 1994) 2

Washington vs US 357 U.S. 348 (1958) 2

Webb vs Fuller-Brush Co 378 F.2d 500 3rd Cir 1967 23

Wells vs Ortho Pharmaceutical Corp 615 F Supp. 262, 266-67 (N.D. Ga. 1985) 16

Wilkinson v Harrington 243 A.2d 745 747-48 753 (R.I. 1968) 29

Wilson vs Johns-Manville Sales Corp 684 F.2d 111 D.C.Cir 1982 12

Constitution

Amendment XIV, United States Constitution 2,30

Federal Statutes

28 U.S.C. 1331 2
28 U.S.C. 1257 (a) 1
42 U.S.C. 1254 (1) 1983 1

Title VII of Civil Rights Act 1964 2
Equal Employment Opportunity Act of 1972 U.S.C. 2000 2
Federal Substances Labeling Act 27

15 U.S.C. The Toxic Substance Control Act of 1976 (TSCA) 2601-2629 28
42 U.S.C. The Resource Conservation and Recovery Act of 1976 (RCRA) 6901-6987 28
42 U.S.C. The Superfund Amendments and Reauthorization Act of 1986 ("SARA") 9658(a) (4) (A) Dec 11, 1980
Restatement of Torts 402A 28
Restatement 2nd of Torts July 1982 12
Section 432 (2) of 2nd 21
4 Restatement of Torts pg 224 29
Federal Rules of Civil Procedure (FRCP)
8a 4
8e 4
104a 23,24
201 (b) 2
401 16
403 23
702 23
703 17 21,23.24
704 23

Books, Reports, Publications

Casarett and Doull's Toxicology The Basic Science of Poison, 3rd Ed, John Doull, M.D., PhD 1986 13

Federal Practice and Procedure 256-257
21 C Wright & K Graham Id at 485 3

Ginsberg & Weiss Common Law Liability for Toxic Torts
9 Hofstra L Rev 859,889-892 25

McCann, J. L et al Potential risks from exposure to organic compounds in indoor air LBL Report LBL- 22473 (1987) 21

E McElwain 63 Harvard L Rev 5, 13 (1949) 5

HW Perry "Deciding to Decide" (1991) 30

Prosser and Keeton on the Law of Torts (5th ed. 1985) 11
W Prosser supra note 334 s 41 at 242 18

Justice Rhenquist- " Oral Advocacy: A Disappearing Art"
35 Mercer L. Rev 1015, 1027 (1984) 5

TABLE OF APPENDICES

APPENDIX	A	Judgment of United States Court of Appeals for First Circuit	1a
		Order of United States District Court for the District of RI	2a
APPENDIX	B	DATA CHEM results	3a
		VMA levels	
		ACCU CHEM results	4a-5a
		WOHL for RI DOH results	6a
		MSDS on Product MPG	7a-8a
		Carcinogens, McCann et al	8a
APPENDIX	C	Report and Recommendation Of United States District Court for The District of Rhode Island	9a-22a
APPENDIX	D	Evaluations by Drs Rogoff and Pomm	23a-26a
		State Sales Answer to Complaint	26a
		Interrogatory Answers in Mills vs Beaulieu	27a-28a
		State Sales alleges MPG Nontoxic	28a-29a
		Objection to exclusion of experts Farrel and Sampson	29a-30a
		Kenneth Reed, PhD,IH Carpet Injury Cases	31a

INTRODUCTORY PARAGRAPH

Appellant, Geraldine Mills, M.D. is appealing from the judgment below as ordered by the United States Court of Appeals For the First Circuit in the case of Mills v. Para-Chem, d/b/a Para-Chem Southern, Inc entered April 7, 2006.

This appeal of that decision is submitted to show that this Honorable United States Supreme Cou.: has jurisdiction of this appeal and that substantial questions are presented.

CITATIONS TO OPINIONS BELOW

The United States Court of Appeals For the First Circuit affirmed the denial of Appellant's (heretofore known as Dr. Mills), appeal from the lower Rhode Island District Court as, " Essentially for the reasons given by the magistrate judge in his report and recommendation, dated April 11, 2005, we affirm the dismissal of plaintiff's claims as time barred."

JURISDICTION

This case falls within this Court's Jurisdiction under 28 U.S.C. 1257 (a) and offers an ideal vehicle to resolve the questions presented. This Court has jurisdiction under "fourth Cox category" to review state court ruling if 1) " reversal of the state court on the Federal issue would be preclusive of any further litigation on the relevant cause of action," and 2) refusal immediately to review the state court decision might seriously erode federal policy." Cox Broadcasting Corp v Cohn 420 US 469, 482-83 (1975), for application of this general jurisdiction rule. Petitioner if so favored by this Court would deem the state law causes of action by the District Court of Rhode Island unconstitutional as so applied. Also jurisdiction under 1254 (1) 42 U.S.C. 1983 as civil rights cases, applies.

A litany of events resulted in the deprivation of substantive and procedural due process of Dr Mills. Actionable misconduct by those so involved has deprived Dr Mills of her civil rights. Jurisdiction of the state court was also invoked under Title VII of the Civil Rights Act of 1964 as amended by the Equal Employment Opportunity Act of 1972 U.S.C. 2000 and under 28 U.S.C. 1331. Dr Mills has been denied her procedural, civil, constitutional rights as allowed by the Fourteenth Amendment and denied her appeal. She was not allowed any evidence, leaving the record totally devoid of affirmative evidence necessary to determine the facts on record. Thompson v City of Louisiana 362 U.S. 199 (1960) the Court stated the question was whether disorderly conduct charges "were so totally devoid of evidentiary support as to render his conviction unconstitutional under the Due Process Clause of the Fourteenth Amendment..... whether rests upon any evidence at all." Dr Mills' case is resting on no evidence at all. Washington vs United States 357 US 348 (1958) and Garner v Louisiana 368 US 157, 163 (1961) all reversed because of the"insufficiency of evidence." Unless there is a "....very obvious and exceptional show of error...," this Court may not review.Graver Mfg v Linde Co 336 US 271 (1949). Dr Mills' case is a prime example of such an obvious and exceptional show of error. In further violation of Dr Mills' due process and equal protection was the use of other 'court' proceedings in this case and in Mills vs Beaulieu et al. United States vs Jones 29, F.3d 1549, 1553 (11th Cir 1994) " Fed R. Evid. 201 (b) provides a judicially noticed fact that must be one not subject to reasonable dispute in that it is either (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned." The RI Medical Board of Licensure Temporary Suspension Order of Dr Mills' license ends with a very

inaccurate as well as slanderous statement. Justice presented this to the jury in the constructive eviction trial Mills vs Nahabedian. At the time it was presented the case of Mills vs Nolan (re medical license) was on appeal and no decision "was found to be true." Even if this fact were found to be true on appeal, (there is no basis for this allegation) if it were permissible for a court to take judicial notice of a fact merely because of being found to be true in some other action, the doctrine of collateral estoppel would be superfluous. 21 C. Wright & K. Graham, Federal Practice and Procedure: 256-257.Depriving Dr Mills from a right to jury with her evidence where the facts were not indisputable violated her constitutional guarantee of trial by jury. Id at 485. United States v Aluminum Co of America 148 F.2d 416, 446 (2d Cir 1945). In this case there are many elements of great public interest and principles of law. Dr Mills' evidence reveals that a product manufactured and distributed by defendant Para Chem was done with misrepresentation, fraudulent claims, and concealment. Dr Mills' lab test results from reputable US laboratories were denied her as evidence. Then one parent with no medical background whatsoever made slanderous comments describing Dr Mills as having "erratic psychological behavior." These false allegations were printed by the RI State Supreme Court in numerous documents which now can be read on the internet. All the while to clear her reputation and name, Dr Mills has willingly undergone all psychiatric testing and multiple evaluations in several states where she held licenses. All reports read, " no psychopathology, no thought disorder, no personality disorder, no impairment." Only for the limited purpose of recognizing a 'judicial act' that the order represents may a court take notice of another court's order, United States v Garland 991 F.2d 328, 332 (6th Cir 1993) It "cannot judicially notice the veracity of allegations in affidavits..." FDIC v O'Flahaven, 857 F. Supp 154, 157-58

(D.N.H. 1994). Without legal representation, now in chapter 7 Bankruptcy, due to a series of events which have literally robbed her of her property rights, her career, and the hesitancy of legal counsel due to the "political overtone," Dr Mills should not be held to the standards of counsel. According to Rules of Civil Procedure 8 (e), " no technical forms of pleading are required. A pleading is sufficient if it contains 1) short and plain statement of claim showing pleader is entitled to relief 2) demand for judgment (RCP 8(a))." Dr Mills cites Haines vs Kerner 404 US. 519,520, 92 S. Ct.594,596,30 L.Ed.2d 652(1972), " her pleadings are held to a less stringent standard than those drafted by lawyer," and in Rodi cs Ventetulo, 941 F.2d 22,23 (1st Cir 1991)," to be read with an extra degree of solicitude."Defendant states, 1) " a claim upon which relief may be granted was not stated by plaintiff." Dr Mills did set forth claims for relief as per Fed R. Civ P. 8(a), 8(e) - a short and plain statement reads as, " Wherefore, plaintiff demands judgment against defendant Para-Chem, alias for personal injury, loss of business, earning capacity plus interest and cost and attorney fees as this court may allow as well as punitive damages. Plaintiff claims a trial by jury on all issues." It is well established RI practice that a pleading should not be dismissed for failure to state a claim unless the pleader can prove no set of facts in support of the claims to entitle her to the relief sought Bragg v Shoppers World (1967).When there is room for doubt, courts historically have disfavored 12 b motions. But here, Dr Mills did claim below that her constitutional rights and her due process were denied. Defendant Para-Chem, alias, presented a myriad of possible defenses twelve (12) in number for the court to deny Dr Mills' case. The Defendant (heretofore known as Para Chem), went so far as to allege that it was Dr Mills' own fault that she was subjected to the vapors from their product Magnum Plus Gold (heretofore known as MPG) on the one hand, yet on the other

denies that MPG was ever used in the installation of carpeting in Dr Mills' rented Pediatric office, and even further contradictory, claims MPG is water based and contains "0" VOC's (a potentially harmful claim to all consumers). They simply cannot have it both ways. Para-Chem alleged to the courts that Dr Mills had some preexisting medical problem but never tells the court what this might be; Para-Chem alleged to the courts that Dr Mills used MPG in some unintended unreasonable way when in fact, Dr Mills did not even know for fact if adhesive or glue was used in the installation until May 10, 2001 when by court order from Justice Thurnberg, Dr Mills was allowed to obtain sampling from the office. All Defendants in Mills vs Beaulieu, State Sales, Gloria Nahabedian, and Robert Weisberg informed Dr Mills that she was not taking any risks whatsoever by returning to the office to practice pediatrics within just 24 hours. It simply cannot be had both ways.

The First Court of Appeals has entered the order to deny Dr Mills' appeal based on the instant case being "time barred." This is the basis for argument but the other issues will be addressed because they are based on no evidence whatsoever. Justice Rehnquist, " Oral Advocacy: A Disappearing Art," 35 Mercer L. Rev. 1015, 1027 (1984), " Nonetheless, the most common reason members of our Court vote to grant certiorari is that they doubt the correctness of the decision of the lower court." E McElwain 63 Harvard L Rev 5 13 (1949) ".....because the decision below was unjust, unreasonable, or plainly wrong..." Yet in Mills vs Para Chem we do find a case of public importance. Any consumer (Gordon vs ParaChem 1985) of MPG could potentially be harmed and this cannot go unnoticed.

STATEMENT OF THE CASE

Dr Mills, a Pediatrician, maintained an office rental for

her practice of medicine at 65 Jefferson Blvd, Warwick Rhode Island 02886 (lower level) from May 15, 1994 until August 15, 1996; renovating suite making it suitable for pediatric practice during her first few months rental, by adding a small exam room. March/April 1996, after two years of peaceful enjoyment Elisa Liberto DMD (above tenant) by human error allowed hazardous chromium oxide xray tank fluid to overflow into Dr Mills' suite. Liberto did not notify OSHA or DEM but told landlady it was melting snow. Mills contacted DEM and they confirmed it was hazardous recommending the carpet in larger room be changed. Landlady and Mills agreed only that one room would be renovated so as to not further inconvenience Mills during peak school exams. Three months lapsed before renovation began (landlady brought claim against Liberto's insurance). That room remained closed off since April 1996. On July 18, 1996 Mills went to office to retrieve patient messages and found landlady removing Mills' confidential patient medical records/personal belongings (Mills refrained from seeking local enforcement). Landlady told Mills she could return the next day to resume practice, July 19, 1996. Five hours into practice on the 19th, Mills had acute symptoms of dizziness, headache, scratchy throat, burning eye. In ensuing weeks Mills altered practice only doing sick checks because of offensive odor in suite and recurring similar symptoms with patients, employees, and family all making verbal and written complaints. Mills contacted RI DOH, DEM, EPA, Poison Control, landlady, later Beaulieu, Inc, State Sales and more. For the safety of her patients and self, Mills relocated her practice in just three weeks. Still doing call for ten other doctors, Mills took a subpar location and as one mother stated when she left Mills' practice, " this is not up to your standards, Dr Mills." Mills spent months building a quality practice at 65 Jefferson. Only something as serious as this case could have made her uproot an entire business, in essence start all over.

It was mere speculation that since Dr Mills and others had no symptoms prior to the carpet installation, then it must be something related to the installation causing the symptoms. Mills did not bring a claim against anyone until landlady in April 1997 sent Dr Mills a demand letter for all back rents from time of moving out. Landlady tendered Mills the balance of damage deposit (Mills did not agree on and never cashed), so there was no reason for Mills to think she would be held responsible for rent monies on a suite she was no longer capable of using for purposes for which it was rented. Mills had to bring a claim, KC 97-405 against landlady, but no other defendants were named. It was not " known" by Mills (as lower court states), that she suffered " injury from carpet and/or other substances on July 18, 1996." If Mills had "known" she would have brought suit against the other defendants in 1997. When Mills moved to the next office, bringing all her belongings (exposed in newly carpeted suite), she did not know transporting them would result in residual vapors harming her further. Landlady told Mills, "it is not the carpet making you sick;" States Sales testified Mills could return to the office in 24 hours; Beaulieu wrote it was safe to return in 24-48 hours. Physicians told Mills to just stay out of the office for a few days. In the new office, Mills continued to have symptoms which now changed (severe abdominal attacks of pain lasting hours lending one doctor to believe it was adrenal carcinoid tumor). After hearing lectures at a D.C. conference on residual effects of toxic vapors, Mills recopied all patient charts (paper is porous absorbs vapors), but still her symptoms remained. In 1998, Environmental physician told Mills to get out of this office, leave everything behind or she would die. Mills left, starting over again. This time her health improved rapidly. Environmental lab testing revealed that Mills had 50-60 times the normal levels of VOC's in her blood and levels of VMA in her urine 100 times normal. Levels did

not clear from her blood until 2001. On or about July 19, 1999 Mills brought claim against Beaulieu, State Sales, Robert Weisberg, IH (for RI DOH) and John Doe Cement. Even in July 1999, Mills had no idea whatsoever that she was to suffer a lifelong injury. Mills did not know until September 5-6, 2001 that chemicals found in Para Chem's product MPG were those found in her tissues blood/urine; Mills did not know until 2001 that chemicals found in her blood were clearing (rather than from some new injury). Again, only with speculation did Mills' then counsel bring claim against, 'John Doe Cement' because carpets are usually installed with some materials. In this case Defendants adamantly denied having used any , asking the court to believe they installed a carpet on cement without any materials. Subpoena for Suvann Kay,(subcontractors that installed carpet for State Sales) was ignored. Defendants went so far as to attempt to fool Dr Mills into believing that there was no glue on that cement. On May 10, 2001, by Court order of Justice Thunberg, Mills was allowed to obtain samples from the original office. State Sales representative, Muscatelli and counsel Reynolds pulled a piece of carpet back in the kitchen area, telling Dr Mills to observe there- where there was only linoleum on cement and no glue. Mills took her experts' advice and asked to sample from an area one foot from the wall in the area that had been her waiting room (where on July 18, 1996 she had observed clean cement). Muscatelli commented, " oh I guess there is glue, it must have been from when the original carpet was installed." This was thirty years prior. In 2001, Dr Mills became aware that glue was on that cement floor. At all times prior, she only speculated. August 30, 2001, State Sales gave Mills' then counsel a letter which read, " ..had they used any adhesive it would have been Magnum Plus Gold," all the while alleging to not have used any materials. Mills contacted Para Chem to obtain its distributors name. In late August 2001 Mills purchased a 5 gallon drum of MPG from Carpet Products

and had it analyzed (See Appendix). August 23, 2001 State Sales gave Mills' counsel MSDS (material safety data sheets) on MPG (See Appendix). These MSDS clearly state that MPG is water based and contains "0" VOC's (volatile organic compounds). Affirmative results were made available to lower court justice on September 5-6, 2001, that very day Mills received them. Justice denied Mills her constitutional right to due process, denied her the right to have on the record any evidence necessary to determine the facts in that case. Sometime after 2001 Mills began having allergic reactions to a myriad of items as fabric softeners, room and car deodorizers, certain perfumes, and later to certain plastic products. Mills had never before experienced such reactions. The lower court decision to bar Mills' appeal in this case bases that decision in part on, "Mills could have gotten that information by 'discovery' in Mills vs Beaulieu. Justice with abuse of discretion did not allow this. Mills could not have known her life would be forever changed when she brought first claim against landlady in 1997 or when bringing claim against defendants for acute injury in 1999. The law is replete with cases regarding split causes of injury, questions as to when statute of limitations accrue. This is the basis for argument here, but also as lower court states, Mills vs Beaulieu has to be reviewed along with this case to clearly understand the travel of this case. That review reveals the total abuse of discretion in 1) denial of affirmative evidence, 2) a record below totally devoid of evidence 3) failure to warn the public consumer 4) misrepresentation, concealment, fraud in manufacture/distribution of products to public 5) concealment of defendants, witnesses and most significantly 6) ruling in Mills vs Beaulieu that a 50 b motion is acceptable to the RI Supreme Court despite Justice Goldberg's stating, "....we have overturned these kind of cases over and over and over again just for this reason of a 50 b motion...."

ARGUMENT- REASONS FOR GRANTING THE APPEAL

In asbestosis cases, plaintiffs do not know whether they will get cancer years later (mesotheliomas develop after 20 years plus). If all plaintiffs exposed were allowed to bring claims for mere speculation that they might get cancer in future many never so injured would be overcompensated. Yet if the statute began to run from the time of initial exposure, many plaintiffs would lose their right of action before they even know they are hurt and with later developing cancers would go uncompensated for their injuries. So the move has been to afford plaintiffs in general, to run the statute from the time in which they discover their injury. Date of discovery of injury in the instant case was on or about September 5-6, 2001. There is a three (3) year statute of limitations on toxic tort and personal injury cases in Rhode Island. This case was timely filed in Federal District Court of Rhode Island within the three year statute. This court clearly has jurisdiction of this appeal in which this plaintiff seeks to overturn the order entered by the lower courts for the following reasons:1) Under the ususal Discovery Rule, a plaintiff cannot bring a cause of action until they are aware of the injury and its cause. Again, even awareness of the injury alone would not suffice in the court [instant case chronic/latent injury was not known until many years later, the cause was known on or about September 5-6, 2001]. This case met the statute of limitations on discovery for an injury and its causal relationship. At all times prior to September 5-6, 2001, it would have been mere speculation and speculation and as in Martinez-Ferrer v Richardson Merrell, Inc 164 Cal. Rptr 591 (2nd Dist 1980) "would have been laughed out of court." As in Martinez, knowledge of acute easily identified adverse symptoms as dizziness, watery eye, scratchy throat in 1996, and even later loss of libido could not have put this appellant on notice that more than five (now ten)

years later, she would be suffering a lifelong toxicant induced lowered tolerance (TILT)as allergic respiratory hoarseness, skin reactions to substances never before affecting her (no longer less traditional injury but ever so increasing in our industrialized/environmentally challenged society). Jackson vs Johns-Manville Sales Corp 727 F.2d 506,521 (5th Cir 1984), " plaintiff would not be barred from bringing a subsequent suit based on claims for separate and distinct injuries following materialization of later disease." Even if successful in her case against Defendants Beaulieu et al, as in Prosser & Keeton on Law of Torts &30 @ 165 (W Keeton 5th ed 1984), " the majority of jurisdictions apply a traditional rule and do not allow claims based on risk of disease in the future."Mills could have been compensated for acute symptoms as dizziness, even loss of libido, lost business (having to move because of symptoms and offensive vapors). She would not have been compensated for injuries which did not yet exist. Laswell & Brown 524 F.Supp 847 (W.D. Mo 1981) aff'd 683 F.2d 261 (8th Cir 1982), cert denied, 459 U.S. 1210(1983), " lawsuit for personal injuries cannot be based upon possibility of some future harm." (See Rheingold v E.R. Squibb & Sons, Inc 1975, Mink vs Univ of Chicago 1978, Plummer v Abbott Lab 568, F. 1983 Supp, 920 (D.R.I.)Jackson vs Johns-Manville Sales Corp 1984, "...logic and justice require that presently latent injuries must await their separate maturity as a cause of action," Id at 520. " To hold otherwise would result in a 'mismatching of entitlement, liability, compensation." Those contracting disease would be under-compensated, those not over-compensated. 5th Cir stated it would not bar plaintiff from bringing claim for a separate distinct injury, Id at 521 Restatement Second of Judgements 24-26 (1982); splitting a cause. Citing McGovern Toxic Substance Litigation in the 4th Cir, 16 U. Richmond L. Rev 247, 257 (1982) wherein the court's willingness to make "Discovery rules," is for purpose

of avoiding strict application of "exposure rules" to plaintiffs. Wilson v Johns-Manville Sales Corp 684 F.2d 111 (D.C.Cir 1982) asbestos insulation worker so exposed in1973 suffering "mild asbestosis" later dies of a mesothelioma. Question for this court is, when does the statute of limitations begin to accrue? Analysis of policies begins with, " 1) where defendants interest in repose is viewed against other factors inclusive of evidentiary, obtaining fair compensation when real harm, determine which are uneconomical anticipatory lawsuits." Id at 120. With diagnosis of acute initial illness the injured party may not need judicial relief. Exactly what took place in this case; Mills did not bring suit for watery eye, scratchy throat, dizziness or even later loss of libido/chemical induced abdominal porphyria, when filing claim against landlady in 1997. Not until Mills was told by physicians that she would die if removing herself from old belongings in 1998, was she able to bring the claim against the other defendants. Court cites Para Chem as alleging " Plaintiff's injury occurred on July 18, 1996 and therefore this Plaintiff cannot meet the statute of limitations." Statute could not run from July 19 (first day exposed) since symptoms were only some dizziness, water eye not yet any chronic injury. It does not follow that all with these symptoms go on to have immune disregulation, nor is this type of injury like a motorcycle accident leaving its victim without a limb. The injury takes many exposures to result in immune disregulation. With no further injury except dizziness, watery eye, Dr Mills would have no cause to litigate. But there was further injury which could not have been brought on mere speculation. On September 5-6, 2001, affirmative evidence for this further injury was available. D.C. Circuit reversed that district court's dismissal of the action stating, " the action was timely filed because the statute of limitations on that separate and distinct disease did not begin to run upon diagnosis years earlier of mild asbestosis. Knowledge in 1996 of acute adverse

reactions did not put Dr Mills on notice that in years after 2001, she'd be allergic to fabric softeners, certain plastic products, certain perfumes, room and car deodorizers, and other never before affecting her.

2) Reason to overturn relative to Causal Relationship It is patently absurd for Para Chem to allege, " there is no relationship between their product MPG and either the activities as pled by Plaintiff in her complaint or any injuries or damages she sustained." This is question for the jury and is so contended by this appellant. It is patently absurd for Para Chem to make a blanket statement not based on any facts or evidence whatsoever simply because no evidence was allowed. Without any discovery allowed, in this case or in Mills vs Beaulieu, without due process, with Justice of lower court ignoring affirmative evidence during beginning of Daubert in Mills vs Beaulieu, this allegation cannot and should not stand. Kyles v Whitley 514 U.S. 419,422 (1995), it was questionable as to whether court of appeals evaluated exculpatory evidence under correct constitutional standard. In defining causation all principles of toxicology are involved. As exposure to a substance increases so does probability of given adverse response. Even before this, a certain dose (LD50 lethal dose) may be fatal or fall into many categories (Casarett & Doul's "Toxicology-Basic-Sciences of Poisons." Range is super-toxic to non-toxic. All chemicals are capable of being poisons, the probability of assessing toxicity, route of exposure, assessing individual and their response, the environment where exposed and physical/chemical properties of agent all critical. All available information must be evaluated before making blanket allegations. Para Chem brought twelve (12) issues as reason to bar this appeal, not one based on any facts as the record below is so totally devoid of evidence. In Mills vs Beaulieu defendants did an extensive search of fifty (50) years of Dr Mills' medical records resultant in no findings of a preexisting

illness to account for her injuries. The record below is so totally devoid of evidence that the issues need to be reevaluated so that expert witnesses and jury can render appropriate decisions based on facts; a case that needs to be overturned and reason alone for being brought to this higher court. It follows logically that if one resides in premises for two years symptom free, renovation takes place, you and many others begin to have symptoms (increase when entering, abate when leaving), each time exposed with same results, one can arrive at a determination of probable cause. This is exactly what took place in 1996- vapors from noxious substances in carpet and other materials (known as of September 5-6, 2001)caused many to have acute symptoms but this did not put anyone on notice that a decade later they would suffer from permanent injuries. However, the strength of association, temporality, consistency of association and coherence with existing information are all present. Yet Justice in lower court in Mills v Beaulieu took each of plaintiff's witnesses instructing they could not testify as to having any symptoms (ie dizziness) Justice redacted Mills' father's testimony by video deposition to obscure the facts that he also had dizziness, burning eyes so no longer able to open windows in office. Justice allowed defendant landlady, after close of her testimony, to return to stand stating, "my eyes did not burn." Mills was not allowed equal protection or due process. [a constructive eviction jury trial did take place at which time Justice presented, with plaintiff's full objection, jury with a copy of Dr Mills' temporary suspension wherein it reads, "....Dr Mills is in psychiatric care and/or did not like the diagnosis given....."] Mills was never in psychiatric care and saw a medical board "pre-approved" psychiatrist arranged by agreement between Bruce McIntyre legal counsel for the board and John Harwood, Esq then Dr Mills' counsel and Speaker of the House, State of Rhode Island. Jerome Rogoff, M.D. of

Massachusetts and Raymond Pomm of PRN (Fla) both found Dr Mills competent to practice medicine and to have no psychiatric illness whatsoever. In toxic tort cases defendants often attempt to prove the plaintiff has some mental illness. Dr Mills was not allowed to present her evaluations or expert witnesses that had examined her. Justice only allowed a fabricated slanderous statement on her temporary suspension notice be given to jury. Outcome of that case against landlady is obvious after they were allowed to read such statements. "In cases involving the area of tension between the First and Fourteenth Amendments on the one hand and state defamation law on the other, we have frequently had occasion to review 'the evidence in the *** record to determine whether it could constitutionally support a judgment' for the plaintiff," also citing Napue v Illinois 360 U.S. 264, 271-72 (1959) "...falsity of testimony used to convict." Fiske v Kansas 274 U.S. 380, 385-86 (1927) "...where a conclusion of law as to Federal right and finding of fact are so intermingled as to make it necessary to....analyze facts..."(See Appendix MPG results) The exceptions to Fiske allowed for this Court to make independent examination of facts (intermingled with law) to decide whether individual is deprived of Constitutional rights. Dr Mills immediately consulted with physicians but none were able to inform her that she was in any danger by staying in the office or by finding a new site and bringing the belongings with her- not until late 1998. Defendants allegation that there is no causal relationship is without basis. Pereira vs Dow Chemical Co., " it is not the plaintiff's duty to identify which of the vapors caused or contributed to the chronic renal failure but rather, it is the duty of the defendant ....to prove the contrary.' They have not done that. Dr Mills has been able to prove which vapors caused the acute and which the chronic latent injuries and was able to do this on September 5-6, 2001:critical information necessary to determine the facts on the record and

would have abrogated the need for a model -all the experts were allowed to go on due to judicial abuse of discretion. Wells vs Ortho Pharmaceutical Corp, 788 F.2d 741 (11th Cir. 1986) noted Ferebee vs Chevron Chemical Co., 736 F.2d, "...if the fact-finder here is convinced that plaintiffs have proven to a reasonable degree of medical certainty...legal standard....it does not matter in terms of deciding the case that the medical community might require more research and evidence before conclusively resolving the questions." DES became a matter of law as precedent to adenocarcinomas. Id at 745 (" expert's opinion need not be generally accepted in the scientific community before it can be sufficiently reliable and probative to support a jury finding.") As in Wells, ignoring science meant rejection of valid evidence; court in Ferebee failed to address scientific merit of plaintiff's evidence. Instant case, September 5-6, 2001 evidence is crucial and must be addressed in interest of public. Federal Rule of Evidence 401 in part states, " evidence is relevant if it has any tendency to make the existence of a fact at issue more or less probable than it would be without the evidence." Styrene was found (VMA) in plaintiff's body, styrene in MPG, and styrene in glue obtained from office in 2001 yet State of RI (Robert Weisberg) reported no styrene was found that could harm Mills when they allege to have tested carpet and air quality (never alleging to have tested glue/adhesive). (See Appendix) It will require of the courts, a consistency of decisions based on evaluation of the validity of the expert witness reasoning, processing data-resulting in inferences or conclusions to prevent injustices as this plaintiff endures. The injustice is a court relying on the unfounded personal opinions of the defendants and their counsel (without expert testimony).Many cases as Ferebee vs Chevron show that, " a cause-effect relationship need not be clearly established...as long as the basic methodology employed to reach such a conclusion is sound such as the use

of tissue samples, standard tests, products law does not preclude recovery until a 'statistically significant' number of people have been injured or until science has had the time and resources to complete sophisticated laboratory studies of the chemical....to recover is not scientific certainty but legal sufficiency...." Dr Mills had tissue samples, standard tests results which were with abuse of discretion ignored/ wanton disregard.(See Appendix)

Rule 703 Federal Rules of Evidence - it is not just in the complaint but for expert(s) chosen by plaintiff, they need " not disclose the underlying facts or data until a cross examination unless required to do so by the court." In this case, Dr Mills motioned the court to place on the record and reveal to the court her test results, the results of products analysis- it was not allowed with wanton disregard or excusable neglect. It would have revealed more than a 51% probability, in fact a 100% affirmation that toxins in defendants' product were the same as adversely affected Dr Mills. Blood, urine, fat testing completely correlate with the results of MPG analysis (product manufactured by Para Chem). [In Mills vs Beaulieu, plaintiff's experts were forced to use a model which had been used in state and federal courts throughout the U.S. and by which Dr Kenneth Reed, IH had successfully brought claims against carpet manufacturers; forced by abuse of discretion of Justice who was given Data Chem results that would have obviated the need for using a model. The model had been peer reviewed and was awaiting publication but Justice threw out his testimony. Justice further, labeled Joseph Regna, M.D. (Graduate of BU Medical School and Johns Hopkins graduate in Toxicology as well as President, at that time, of New England Society of Toxicologists) as " learning impaired." Justice set aside two weeks for the trial yet had her next jurors filing into the courtroom before Dr Regna even completed his testimony about one substance, not allowing the presentation of any

epidemiologic or animal studies, or any evidence. A Daubert Hearing lasted little more than one day in a toxic tort case. W Prosser supra note 334 s 41, at 242, "....where causal connections have been abandoned as requirement, the judgments were based upon " (c)ircumstantial evidence, expert testimony, or common knowledge...from which the causal sequence (could) be inferred." Boldt v Jostens, Inc, plaintiff claimed her injuries were from exposure to vapors from her place of work-from heated glues which later caused her to contract a condition known as Goodpasture's Syndrome wherein the body's own immune system goes awry and attacks the lungs and kidneys. Expert in that case, testified the etiology/cause of Goodpasture's is unknown, " can probably be many different things and different for different people." He also testified that " the glue fumes had a great deal to do with her illness, and certainly caused aggravation." The Supreme Court of Minnesota found that this testimony was sufficient to award this plaintiff because, " the truth of the opinion need not be capable of demonstration." The Montana Supreme Court took a liberal path to proof of causation in Conway v Blackfeet Indian Developers, Inc where after a backhoe injury, multiple sclerosis symptoms very quickly arose. Medical experts agreed there is no known cause for MS. Supreme Court ruled, " those who investigate the cause of MS and what causes it to become symptomatic are at the frontier of medical science; until they have explored further no one will have affirmative evidence...this leaves plaintiff in the seemingly impossible position of being required to prove proximate causation where there is not direct medical evidence on this point." The ruling was based on indirect evidence that was the coincidental development of a disease immediately after a trauma. In Koller v Richardson-Merrell, Inc, court did not deny the evidence of a plaintiff where a child's birth defects were claimed to be from the mother's ingestion of Bendictin. Plaintiff was unable

to prove the mechanism by which this occurred nor were they able to prove it was not from some other cause. The court in its decision effectively did not want to deprive all plaintiff from reaching a jury because a product was not an" accepted cause'" of the injury. Dr Mills' experts were just beginning to present epidemiologic data and studies (data which reveals disease in exposed populations versus in unexposed ones). Going back to the case law now known in asbestosis cases, the link between asbestosis and mesothelioma was not established until 1970's. Epidemiologic studies rather than methodology established causation, conclusions which allowed courts to accept causation as a near matter of law. The inferences are often so strong as to abrogate the need for reasoning and methodology. See Betrand vs Johns-Manville Sales Corp 529 F. Supp 539,544 (D. Minn 1982), McEven vs Ortho Pharmaceutical Corp where plaintiff claimed blindness was due to birth control pills, Oregon Supreme Court upheld jury's decision which showed influence of causation " more probably correct than incorrect." Inferences come from animal studies, quality of epidemiologic studies, dose-response relationships. The inaccessibility of evidence often allows for shift of burden from plaintiffs to defendants. 1982 Amb Found Research J. 487, 496-503, "....plaintiffs should be required to produce evidence sufficient to establish that the substance at issue 'more likely than not' caused the injury or disease in question." In this case, evidence was made inaccessible by abuse of judicial discretion; precluded from doing so by lower justice. In most toxic tort cases the evidence either never existed or no longer existed due to time lapses and therefore there is no shift of burden to defendants because the issue of superior access is moot (lost of nonexistent evidence). In this case and Mills vs Beaulieu both sides had full access to the evidence so the shift should be to defendants to prove otherwise or question for jury to decide. All of the following issues of" more likely than not tests, probability, are questions for jury. Parker v Employers

Mutual Liability Ins Co., plaintiff alleged his cancer was work related, court rules, " a possible cause becomes 'probable' when in the absence of other reasonable causal explanations it becomes more likely than not that the injury was a result of its action." This " more than likely not test, " would have required evidence from September 5-6, 2001 where economic interests would have been most suited if not for judicial abuse of discretion. Issues in the instant case would have been resolved allowing for judicial economy. Increasing claims regarding latent injuries by toxins concerns the way they work on the body. It is critical to meet the evidentiary standard. This did not happen in Mills vs Beaulieu, State Sales, Robert Weisberg nor in Mills vs Nahabedian (later combined by the courts then separated out again). A jury was never presented with any of the evidence (not recognized agent as styrene, not identifiable group of symptoms of many, not chronic signs of immune/anatomic alterations (just a slanderous statement by someone at RI Medical Board).Question to jury, 'is there a relationship between the "disease" (alteration) and the toxic substance. Epidemiologist then use statistics, animal data determine consequential effects on exposed/unexposed but in end must make an "inference" concerning the information as to whether or not the toxin was " more likely than not" the cause of the disease (alteration).Relationship between disease/toxic substance lies with epidemiology as DES and clear cell adenocarcinoma which is with almost certainty established epidemiologically. Rule 703 allows an expert to base his opinion upon hearsay as epidemiologic studies if experts in the field reasonably also rely on them. Kehm vs Proctor & Gamble, court allowed these studies under public records exception to hearsay rule and experts in field also relied on studies of same kind. Id at 902 Justice Jenkins in Allen v United States, " there appears to be no question whether or not ionizing radiation causes cancer and leukemia." There is no question VOC's are carcinogenic, some

cause leukemia. This is the threshold question. Summers v Tice, a shift of burden of proof to defendants took place and plaintiff recovered. Basko v Sterling Drug Co., relying on Section 432(2) of Second Restatement of Torts reads in part " the inference may rationally be drawn that defendant's conduct was a substantial factor contributing to plaintiff's injury...unless the facts are proven otherwise by sufficient evidence, the inference provides a rational basis for imposing liability..." Mills vs Para Chem Mills v Beaulieu et al totally devoid of evidence McCann, et al (1987) scientifically established organic compounds as those found in analysis results of September 5-6, 2001 of MPG are carcinogenic (See Appendix) Dr Mills can demonstrate that agent(s) were a sufficient cause of the relevant chronic injuries being able to do so only as of September 5-6, 2001, her blood, urine, fat measuring these chemicals and their breakdown products in numbers significantly higher than would be from chance or as in Allen v United States, from " background doses." It is biologically known VOC's produce alterations in immune function/are carcinogenic. Burden of proof must shift to defendant because 1) it is more likely than not, the probability is greater than 50% that MPG caused Dr Mills' chronic injuries 2) biologically known VOC's alter immunity 3) Dr Mills denied analysis results/any epidemiologic and animal data (stipulated she would have the lunch hour only to obtain discovery and only this would reach jury-no evidentiary hearing took place. The case may be brought again if no due process and equal protection. Yet here, there is a different product, different defendant, different injury- one that is latent/chronic that could not have been known in 1996. This is question of res judicata and collateral estoppel.

3) Res Judicata and Collateral Estoppel apply states Para Chem, because they claim the case was already heard, that it was the "same set of events." Then all plaintiffs exposed to asbestos should not be allowed to bring claims for their

mesothelioma, years later, because the chronic and acute injuries were resultant from the "same set of events." Even if one takes the defense position that prior case followed all evidentiary rules, allowed for complete due process; this case does not involve issues of res judicata because it is about 1) a different product, 2) different defendant and does not include defendants in Mills vs Beaulieu 3) is a different toxic substance with different chemical composition, 4) different chronic/latent injuries and 5) results from analysis of MPG " discovery" on or about September 5-6, 2001. Prior to this date noone could determine if there was a causal connection (MPG could have been analyzed as having "0" VOC's). It is not as defendant states, a case brought just because identity of the party was made known. It is the "identity" of the composition of MPG that obligates Dr Mills bringing this claim not just for her own injuries but for the potential injury MPG could cause any public consumer (due in most part to its fraudulent labeling).There is no safeguard where attorneys and judges do not know about scientific principles as residual vapors (justice in Mills v Beaulieu, " they are not like spores that you can see"- it does not require that you see or smell something to make it harmful, example carbon monoxide-odorless and colorless). Defense counsel mocked animal studies of hexane exposure, studies cannot be done on humans because of societal prohibitions against testing humans to the scope and extent of animal testing for chemical exposure; also due to its lethal toxicity. Animal test data is the principal source of information regarding dose response and minimum safe levels for exposure. Defense counsel stated hexane leaves the body after twenty four hours when all VOC's absorb into fat/blood and take years to clear, often never completely. Defense had no expert available to support such patently absurd testimony. Rule 702 allows expert testimony to be admissible if it assists trier of fact in understanding evidence to determine facts in issue. Courts should err on side of proffered evidence not

denying all evidence as in Dr Mills' cases. In Re Japanese Electronic Products Antitrust Litigation 723 F.2d 238 3rd Cir 1983, " It was legal error for trial court to substitute its judgment or reliability for that of experts in the field." In determining what facts or data an expert reasonably relies upon the proper inquiry is not what the court deems reliable but what actual experts deem reliable. Rule 704 allows an expert to give an opinion or inference on issue decided by jury or trier of fact. Webb vs Fuller Brush Co 1967, physician was not allowed to testify because it was already shown that cream was dangerous so jury did not need expert guidance. With 100% affirmative evidence, MPG containing VOC's in the quantities found would afford any jury the obvious conclusion as to the dangers of such a product. A trial court's decision to admit or not, expert testimony, may only be disturbed on appeal if erroneous abuse of discretion stood (Salem vs US Lines Co 370 US 31 (1962))-exactly what took place in Dr Mills' cases. Rule 104(a), 703 and 403 analysis of admissibility- no independent scrutiny and evaluation of factual bases of expert testimony took place. Frye v United States 293 F. 1013 (D.C. Cir 1923), " while courts will go a long way in admitting expert testimony deduced from well-recognized scientific principle or discovery, the thing from which the deduction is made must be sufficiently established to have gained a general acceptance in the particular field in which it belongs." The methodology (model) proposed by Dr Kenneth Reed was used in federal/state courts, favoring plaintiffs (Anello, Mass), even without affirmative evidence. This case has affirmative evidence so a model using speculative numbers would not be necessary to calculate exposure levels in the office and later. The model was peer reviewed, ready for general acceptance, and was based upon objective and reproducible data. Sterling v Velsicol Chemical Corp there was a lack of clinical tests for diagnosis but in this case were available September 5-6, 2001, are reproducible, objective, and have scientific consensus

necessary to establish a field of expertise. The chemical found in MPG are known carcinogens and have known effects on the human immune system. An objective procedure must be allowed where qualified persons can either duplicate the results or draw their own conclusions from fact. The courts must inquire but not infringe upon the fact-finder's role in assessing the weight of expert testimony 104(a) 1244-1245. Rule 703, Judge Weinstein noted, " there is an independent duty to evaluate the reliability of evidence offered,"- not done with evidence of September 5-6, 2001. There is a built-in bias in this data collection because defendants adamantly refused independent testing leaving no bases whatsoever to deny plaintiff her due process in Mills vs Beaulieu, leaving Dr Mills no alternative upon discovery September 5-6, 2001 but to bring this claim. Any reasonable expert toxicologist could use the affirmative DATA CHEM results on MPG as condition of admissibility, Fed R. Evidence 104 (a). In allowance of Dr Mills' due process, it is question for jury to evaluate this evidence and testimony submitted by experts for Mills and Para Chem (along with their inferences and statistics). Opposing experts could reach opposite conclusions from the same data or even agree, but it is for the jury, not the defense counsel and justice to decide upon. Jenkins v United States 307 F.2d 637, 646 (D.C. Cir 1962) where experts used the same methodology but differed "solely on the conclusions they drew from the test results and other information." Court decided, "....was thus a classic battle of the experts, a battle in which the jury must decide the victor." Thus a cause effect relationship need not be clearly established by animal or epidemiologic studies before doctor can testify that in his opinion, such a relationship exists." Evidence is usually lost or never existed in toxic tort cases. In this case affirmative evidence still remains and needs to be independently tested by Para Chem. It is highly unusual for Defendants in a toxic tort case to not only not independently test but to adamantly refuse to do so when

Mills was given court order to sample. Court No 3 US ex rel. DiGiacomo v Franzen 1982, "...if witness were restricted to testify only the hairs were similar, state would be deprived of the full probative value of otherwise available evidence." Denial of fundamental fairness with no independent analysis or any evidence took place here. Glue/carpet are preserved. Experts can determine quantities present in 1996 based on chemical and its properties to outgas. In Sentilles vs InterCaribbean the mere probability by witnesses was sufficient to submit issue to jury. It only remains for "reasonable jurors" to determine if "legal sufficiency" based on expert testimony shows MPG, " more likely than not caused plaintiff's injury." Cramer v Morrison 1979, "..seldom is it possible to exclude all possible chance for error...but there is no requirement in our law that admissibility of scientific test evidence must be predicated on 100% degree of accuracy."Id at 884.More probability of causal connection than exclusion (Appendix Data Chem/AccuChem) Mills saw bare cement on July 18, 1996, May 10, 2001 it was covered with straw colored "Paste." Barring by res judicata would so prejudice Mills further giving authority to those concealing information which may further injure public. Did defendants in Mills v Beaulieu conceal P Chem's identity or did P Chem conspire to conceal identity as it did that of MPG's composition? That is what this case is about, not about learning identity of defendant. Unlike DES manufacturers whose products are so similar that the identity need not be known to bring claim, there cannot be comparison of DES case law to that of glues. P Chem admits some are water based safer, reasonable alternatives available. Ginsberg & Weiss Common Law Liability for Toxic Torts-one cannot claim " concert of action theory, " here because identity was admitted by defendant, " if we used any it would be MPG, and it is nontoxic."(Appendix) This is question for jury based on evidence. Concert of action theory as DES would "render

virtually any manufacturer liable for defective products of an entire industry even if could be demonstrated the product causing injury was not made by defendant." Sindell vs Abbott Labs (Bichler vs Eli Lilly ruling no identity of defendant). Here the jury just need determine MPG is not water based, was misrepresented. In subsequent actions (only if a "full and fair" opportunity to litigate an issue in prior action- not allowed in Mills vs Beaulieu) trial courts have discretion to apply collateral estoppel. Parklane Hoisery vs Shore. Plaintiff had available new evidence, as did Mills in September 2001. Issues in estoppel 1) extent of litigation- Daubert with no epidemiologic, animal data, or any evidence (no due process) 2) foreseeable of future litigation- not know of permanent injury when case brought 3) negligence, strict liability, conspiracy issues not litigated 4) did manufacturer P Chem know or reasonably should have known of danger associated with MPG- not litigated in prior case 5) instant case about different substance, composition, defendant, different injuries. Burden is upon each actor to prove he has not caused harm- unable to do so in prior case where defendant "got away with it." Mills has three years from date of discovery to notify defendant of toxic tort/personal injury in RI. Mills waited in part to determine if the chronic injury would abate. To date TILT (toxicant induced lowered tolerance) allergic reactions immune alteration has not. (Of interest is P Chem requesting extension to December 2004 to answer claim yet allege Mills notified them "too late." This claim could not be enjoined with 1999 filing for following reasons: 1) Justice denied Mills right to due process not allowing evidence making prior record totally devoid of evidence 2) prior defendants concealed both identity and composition of MPG- did Para Chem know of prior case is question for jury: a) denied what they claim they would have used as glue, b) denied that any glue was used at all c) ignored subpoena of subcontractors installing carpet- Suvann Kay; 3) MPG known not to be water based September

2001. Ayer v JaneC Stormont Hospital, Defendant sought by interrogatories identity of experts but plaintiff refused and district court held plaintiff in contempt for refusal to supply information. Justice here did not hold defendants in contempt for refusal to answer subpoena or identifying (now known adhesive company). 4) Statutory Standard of Care-Defendants did conceal identity of Para Chem until 2001, but Para Chem by concealing composition of MPG violated Federal Substances Labeling Act committing fraud. This deprived Dr Mills her right to full health by distributing a product without warning, with misrepresentation also known as statutory standard of negligence wherein inferences of negligence per se arise from the federal statute labeling act; or there is conclusive evidence of Para Chem's breach of duty of care. This case is about Para Chem's violation of this standard of care. Under Strict Liability Restatement of Torts 402A plaintiff must prove a product is defective by reason of being unreasonably dangerous after manufacture and distribution by defendant. The "defect" can include manufacture, design, or failure to warn. Barker vs Lull Engineering Co (1978) 20 C.3d 413, 143 Cal Rptr. 225, California Supreme Court case, plaintiff could recover when product "failed to perform as safely as an ordinary consumer would expect when used in a reasonably foreseeable manner. Where benefits of design do not outweigh risks of danger inherent in design." Proving VOC's in MPG was proximate cause, burden shifts to P-Chem to show benefits outweigh risks." Obien vs Muskin Corp No.A-45-95 (1982), law goes even further " even if a product performs safe as ordinary consumer would expect, a defect in product can still be shown if an alternative was possible; or product "too dangerous." P Chem could have used water based (MSDS on MPG-0 VOC's) Public is led to believe MPG is safe-is it defect or intentional violation is question for jury 1)failure to warn 2) manufacture defect and 3) design defect. P Chem markets MPG as indoor/outdoor (Gordon v P Chem 1985 explodes near

heater)It was reasonably foreseeable that MPG would be used in carpet installing. TSCA (Toxic Substance Control Act), RCRA (Resource Conservation and Recovery Act) identify hazardous substances citing private individuals right to seek relief under common law. Common law theory encompasses nuisance-substance offensive to senses, injurious to health, obstruction to free use of property. MPG caused substantial interference with peaceful enjoyment 4 Restatement of Torts @ 224: complaints of offensive smells and physical discomfort (acute), prolonged exposure to residual vapors (chronic) show proximate cause and distinct injuries.(belongings preserved/still vapors outgas) Feldman vs Lederle (A-70 July 30, 1984) " when strict liability defect consists of improper design or warning, reasonableness of defendant's conduct is a factor in determining liability."With knowledge of defect strict liability analysis equates to negligence on reasonableness of defendant's conduct. Strict liability, common law: product MPG did not perform properly, was defective when left defendant's control being replete with VOC's (alleged none), injuring Dr Mills by defect. Beshada vManville, asbestos case where without benefit of any factual record, defendants were barred from proving they could not have known their products would place plaintiff at risk. They were absolutely liable.

DECISION BELOW CONFLICTS
WITH THIS COURT'S PRECEDENTS

Court cannot state Mills "knew" was "aware" of injury that had not yet occurred (doctors had not yet told her of, defendants told her did not exist Mills only speculated carpet (other materials if existed) caused her acute/chronic and distinct injuries. Footnote @ xiv, "...observed clear cement foundation..." Not until May 10, 2001 did Mills "know" become "aware" that a "yellow glue like substance" covered that cement. At all times prior it was " mere speculation" having seen one drop of "yellow.."substance on a door. At pg iv , "Neither test (air or carpet) revealed presence of toxic

substances.." Glue was not even tested by State. Unlike in Arnold, it is not Mills' view that "..action does not accrue until investigation is complete." It is, action accrues when injury and its cause become known. An altered immune response, lifelong intolerance to substances could not have been known when Mills had dizziness July 19, 1996. Court @ xiv Arnold,"..such factual investigation is subject of discovery process."(not afforded Mills)Quoting from Court's own argument, Wilkinson and Lee, "...person should have reasonable opportunity to become cognizant of an injury and its cause before statute of limitations begins to run." Renaud as well does not apply here. " In order to toll the running ..would have to be a showing..attempted by fraud or misrepresentation to conceal the existence of cause of action against it." Mills wrote, "..Defendants in that case denied her right to any information regarding MPG," " There was a "failure to warn" not only by this Defendant but, by "all" defendants in...Beaulieu..." Court is inaccurate, " Plaintiff has made no allegation that Para Chem concealed its identity from her." Discovery rule should be applicable. In Renaud, plaintiff inhaled fumes from one time spill, here Mills unknowingly suffered ongoing injury for years (separate/distinct injuries).Hart v Mazur 1995 "if under any theory allegations are sufficient to state cause of action.....motion to dismiss must be denied."

CONCLUSION

Appellant has been denied due process, denied "full and fair" evidentiary review of her cases per Constitutional Amendment XIV. Statute of three years from date of discovery of injury (chronic) and its cause was met (from September 5-6, 2001). The outcome is of public concern with impact on a society with ever increasing environmental injuries. MPG is potentially harmful to all being marketed falsely as safe.To describe Mills as making "bold assertions and unsupported conclusions," evidence shows otherwise. Yet P Chem claims Mills knew of her injury July 19, 1996. It cannot be had both

ways. Mills v Nahabedian 1997, Mills had no knowledge she was to suffer chemical induced abdominal porphyria and lost libido; Mills v Beaulieu, she had no knowledge she would suffer TILT (lowered tolerance lifelong), just as in this claim she has no knowledge if she will contract cancer later on from the present injuries. Eagle and Picher Industries v Cox re:physical injury requirement, "..judicial system cannot handle mere speculation or fear of exposure ..plaintiffs must be later able to sue." P Chem made bold assertions, unsupported claims doing no independent testing, committed fraud. Brafford v Susquehanna, "..both parties should be given full opportunity to develop a complete factual record on issue." It was not done. Adams v Johns-Manville, "a requisite element of causation is lacking until injury actually materialized." Acute symptoms would not put one on notice that decades later there would be distinct chronic injury. In a logical orderly approach in two steps 1) evaluate medical reports 2) evaluate MPG results-both not done. Res Judicata/Collateral Estoppel: ask three questions 1) is there a burden to litigants in previous case- no, they are not defendants in this case 2) is judicial economy benefitted- if not for abuse of discretion in prior case this claim would not be brought 3) does case affect minimizing of inconsistent decision-MPG not litigated in prior case so is not relevant to MPG. The court cannot have it both ways-on one hand not allowing MPG's composition into evidence, on the other hand stating the claim against Para Chem has already been litigated. Dr Mills does have the constitutional right to have the previous case reheard because there was no "full and fair evidentiary hearing," but this case is only about MPG- a different product and composition, different defendant, different chronic injury. Wherefore, in interest of this Appellant as well as for public concern this appeal should be granted. H W Perry Jr, "Deciding to Decide 1991, "importance ultimately objective..importance of case itself..its impact on society" is judged. Our society demands fair review of environmental issues.

Respectfully submitted by
Petitioner prose
Geraldine Mills, M.D.
191 Squantum Drive
Warwick, Rhode Island 02888
401-463-8433

APPENDIX A

UNITED STATES COURT OF APPEALS
For the First Circuit

No. 05-1842

GERALDINE MILLS, M.D.

Plaintiff, Appellant

v.

PARA-CHEM, d/b/a PARA-CHEM SOUTHERN, INC..

Defendant, Appellee

Before

Lynch, Lipez and Howard
Circuit Judges

JUDGMENT

Entered: April 7, 2006

We have carefully reviewed the record in this case, including briefs of the parties. Essentially for the reasons given by the magistrate judge in his report and recommendation dated April 11, 2005, we affirm the dismissal of plaintiff's claims as time barred.

Affirmed.

By the Court:
Richard Cushing Donovan, Clerk.

By: /s/ Margaret Carter
Chief Deputy Clerk

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

GERALDINE MILLS, M.D.,
Plaintiff,

v. C.A.No. 04-393S

PARA-CHEM d/b/a
PARA-CHEM SOUTHERN, INC,
PARA-CHEM STANDARD DIVISION
and PARA-CHEM, Aias, a
foreign corporation.
Defendants.

ORDER

The Report and Recommendation of United States Magistrate Judge David L. Martin filed on April 11, 2005, in the above captioned matter is accepted pursuant to Title 28 United States Code 636 (b) (1). Defendant's Motion to Dismiss is GRANTED because the Complaint is time-barred.

By Order,

/s/
Deputy Clerk

Enter:

/s/ William Smith
United States District Judge

Date: 5/2/05

APPENDIX B

DATA CHEM
Laboratories SAMPLE ANALYSIS DATA SHEET
A Sorenson Company
Date Printed.....05-Sep-01 DCL Sample Name 01114196
Client Name...Geraldine Mills DCL Report Group 011-2045-01

Analytical Results

Analyte	Date Analyzed	Result
Pentane, 2 methyl (6.28)	05-Sep-01	38
Pentane 3 methyl (6.59)	05-Sep-01	65

(Results in ng/sample)

DATA CHEM
Laboratories
A Sorenson Company

Date Printed...05-Sep-01 Client Sample Name Mayojar
Client Name....Geraldine Mills DCL 011462
DCL Report Group 011-2101-01
Analytical Results

Analyte	Date Analyzed	MDL	Result
2-Butanone	05-Sep-01 10:36		140
4-methyl-2-pentanone			98
Toluene			81
Ethylbenzene			150
m,p-Xylene			55
o-Xylene			68
Styrene			480

Rhode Island Hospital
Patient Mills, Geraldine MR #(0000)006440069
DOB 07/04/52
Ordering M.D. Hanna, George M.D.
Physician: Hanna, George M.D. Admitted 08/16/06
Location: POBL Discharge: 08/16/96

Department of Pathology
593 Eddy Street
Providence, Rhode Island 02903
Telephone 401-444-6107

CHEMISTRY-ROUTINE
Endocrine-Metabolic

Procedures:	VMA
Units:	UG/MGC
08/16/96 1640	146

Date of Report 08/21/06 Time 2134

Hanna, George M.D.
185 A High Service Ave
North Providence
RI 029045114

ACCU-CHEM
Laboratories

A Division of
E.H.S. Inc.
990 Bowser
Suite 800
Richardson TX 75081
972-234-5412
1-800-451-0116

LABORATORY
REPORT

Patient Name
Mills, Geraldine

Referring Physician
Dr N. Thomas LaCava

Sample Identification
806C25352

Date Collected	Date Received	Date Analyzed
4/8/98	4/9/98	4/13/98

PANEL 8 Aliphatic Volatile Solvents

Type of Specimen
Blood

Compound	Results NG/ML (PPB)	Accu-Chem	Detection limit NG/ML (PPB)
2-methylpentane	8.9	1.0	1.0
3-methylpentane	14.2	4.5	1.0
N-Hexane	5.3	2.0	1.0

Compound	Results	Accu-Chem	Date Received 20 Apr 1999 / Date Analyzed 22 Apr 1999 Detection Limit
2-methylpentane	>50	1.0	1.0
3-methylpentane	>50	4.5	1.0
N-hexane	29.9	2.0	1.0

			Date Received 23-May 2001 / Date Analyzed 12-Jun-2001
2-methylpentane	<0.5	1.0	
3-methylpentane	<0.5	4.5	
n-hexane	<0.5	2.0	

* the above is from authentic documents reproducible from labs in which testing was done and placed in this appendix to show that these toxins take years to metabolize and clear from the human body

In June 2001 Dr Mills was aware of an injury and no longer had to merely speculate; these toxins increase in the blood as they are removed from fat (being lipophilic) prior to clearing from the body. On September 5-6, 2001 Dr Mills knew the most likely cause of her injury (at no time prior could she have known). Sample mayojar was taken from MPG 5 gallon drum

WOHL Wisconsin Occupational
Health Laboratory
Wisconsin State Laboratory of Hygeine

September 3, 1996

Robert Weisberg
ENV Monitoring
102 Slater Ave
Providence, RI 02906-5624

PROJ MILLS OFFICE

The results for the samples received by the lab on 08/16/96 are as follows:

Lab#	Field#	Analyte
593551	TUBE	Styrene, phenylcyclohexene
593552	BLANK	Styrene,phenylcyclohexene
593553	BULK CARPET	Styrene,phenylcyclohexene
593554	BULK TILE	Styrene,phenylcyclohexene

Comments: Phenylcyclohexene (4-) was too small to be confirmed.

If you have any questions about these results please call the lab at 800 446 0403
/s/ Steve Strebel, Organic Supervisor
/s/ Tim Eckert
* the results are not added, Robert Weisberg IH stated "no styrene was found" but comments do not state that. This is added to appendix only to show that NO GLUE was tested by representative sent by RI DOH (Department of Health).

MATERIAL SAFETY DATA SHEET

Page 1

PARA-CHEM PO BOX 127 Simpsonville SC 29681
24 hour emergency telephone 864-967-7691

SECTION 1 PRODUCT IDENTIFICATION
Chemical Name MAGNUM PLUS GOLD —4099
Chemical Family WATER BASED ADHESIVE

SECTION 3 HAZARDOUS IDENTIFICATION

CARCINOGENICITY ; THIS PRODUCT CONTAINS NO INGREDIENT LISTED AS A CARCINOGEN BY IARC, NTP OR OSHA.

*Carpet Products
One Wholesale Way
PO Box 8559
Cranston RI 02920

* this notation was on MSDS given to Dr Mills by State Sales, Inc on August 23, 2001.

Page 2

SECTION 9 PHYSICAL AND CHEMICAL PROPERTIES
APPEARANCE AND ODOR: light straw colored paste.

Grams Volatile Organic Compounds/Liter of Coating: 0 (Based on no solvent)
Grams Volatile Organic Compounds/Liter of Material: 0(Based on no solvent)

SECTION 11 TOXICOLOGICAL INFORMATION

This product has been tested for toxicity (acute inhalation, acute dermal skin irritation, oral) and has been found to be non-toxic as defined by The Federal Hazardous Substance Act, 16 CFR 1500.3.

* Carpet Products
One Wholesale Way
PO Box 8559
Cranston RI 02920

PARA-CHEM REPORTS ON MSDS; MPG contains no ingredients listed as carcinogens.

Concentrations of Some Organic Compounds in the Indoor Air of Homes as adapted from McCann, et al (1987)

Chemical	Concentration
CARCINOGENS	
Formaldehyde	
Benzene	
Styrene	
Other compounds	
Toluene	
Xylene	

APPENDIX C

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

GERALDINE MILLS, M.D..
Plaintiff

v. CA 04-393S

PARA-CHEM d/b/a
PARA-CHEM SOUTHERN, INC
PARA-CHEM STANDARD DIVISION
and PARA-CHEM, alias
a foreign corporation,
Defendants

REPORT AND RECOMMENDATION

David L. Martin United States Magistrate Judge

Before the court is Defendant's Motion to Dismiss Plaintiff's Complaint (Motion to Dismiss or "Motion") Dismissal is sought by Para-Chem, d/b/a/Para-Chem Southern Inc Para-Chem Standard Division and Para-Chem ("Defendants" or "Para-Chem") pursuant to Fed. R. Civ. P. 12 (b) (6) because the Complaint is both time-barred and precluded by the doctrine of res judicata. Plaintiff, Geraldine Mills, M.D. ("Plaintiff" or " Dr Mills") has filed an objection to the Motion to Dismiss. This matter has been referred to me for preliminary review, findings, and recommended disposition pursuant to 28 U.S.C. 636 (b) (1) (B) and D.R.I. Local R. 32 (a). A hearing was conducted on March 23, 2995. For the reasons stated herein, I recommend that the Motion to Dismiss be granted.

Facts and Travel

Plaintiff is a pediatrician whose office was located at 65 Jefferson Boulevard in Warwick, Rhode Island. In March 1996 a leak from an upstairs office damaged the carpet in Plaintiff's office. The landlady had the carpet in Plaintiff's office replaced on or about July 18, 1996 with a carpet manufactured by Beaulieu of America, Inc ("Beaulieu") and installed by State Sales, Inc ("State Sales"). Thereafter, the rug and/or cement emitted strong, noxious vapors to such a degree that Plaintiff her family, her employees and her patients complained of a variety of symptoms including burning eyes, scratchy throats, dizziness, nausea, headaches, vertigo and pressure in the ears. Plaintiff complained to the landlady, Beaulieu, State Sales, the Rhode Island Department of Environmental Management and the Rhode Island Department of Health. The Department of Health subsequently sent Robert Weisberg to conduct air quality testing of Plaintiff's vacant office. He also removed a section of the carpet for further testing. Neither test revealed the presence of toxic substances or fumes. In early to mid-August of 1996 Plaintiff vacated office taking her belongings including medical records, patient's charts, books, furniture, and curtains, with her. However, as Plaintiff subsequently learned, the belongings she removed from her office may have been contaminated and the same noxious vapors continued to cause adverse effects to Plaintiff as well as to her family, employees and patients in her new location. In July of 1999 Plaintiff sued Beaulieu, State Sales her landlady, Robert Weisberg and John Doe Cement Co. Alias in the RI Superior Court. The hearing justice conducted a pretrial hearing pursuant to Daubert v Merrell Dow Pharm Inc 509 US 579, 113 S Ct. 2786, 125 L.Ed 2d 469 (1993) after the defendants challenged the validity and relevance of the proposed trial testimony of Plaintiff's experts. The hearing justice concluded that the expert's opinions could not withstand scrutiny under Daubert and refused to all them to

material element necessary to sustain recovery under some actionable legal theory." Dartmouth Review, 889 F.2d at 16 (quoting Gooley v Mobil Oil Corp 651 F.2d 513 515 1st Cir 1988.)In general when dealing with a motion to dismiss under Fed R. Civ P. 12 (b)(6) consideration of documents not attached to the complaint or expressly incorporated therein requires conversion of the motion to one for summary judgment pursuant to Fed R. Civ P.56 See Watersoj v Page 987 F.2d 1 3 (1st Cir 1993) " However, courts have made narrow exceptions for parties for official public records; for documents sufficiently referred to in the complaint." Id

Discussion

Defendants argue that Plaintiff's complaint is barred by the statute of limitations see Defendant's memorandum of Law in Support of Their Motion to Dismiss (" Defendants' Mem") at 1,5 and by the doctrine of res judicata see id at 1-2 8-10. Because the court concludes that Plaintiff's complaint is time barred the court need not address Defendant's res judicata argument. Rhode Island General Laws 9-1-14 provides in relevant part that : Actions for injuries to the person shall be commenced and sued within three (3) years next after the cause of action shall accrue and not after. RI Gen Laws 9-1-14 (1997 Reenactment) Section 9-1-14 (b) " governs all tort suits to recover damages for personal injuries, regardless of the particular legal theory on which relief is sought." Arnold v R.J. Reynolds Tobacco Co 956Supp 110 113 (D.R.I. 1997) (citing Pirri v Toledo Scale Corp 619 A.2d 419 430-31 (R.I 1993) (holding that personal injury claim based on product liability negligence, implied warranty and failure to warn was governed by 9-1-14 see also Renaud v Sigma Aldrich Corp 662A.2d 711 714 (R.I. 1995) (holding in product liability action that the "three year limitation period set forth in 9-1-14 for commencing actions for ' injuries to the person' is the applicable statute of limitations") (citing Pirri).According to Para Chem "Plaintiff filed her Complaint with the United

States District Court for the District of Rhdoe Island on September 7, 2004 Plaintiff alleged injury occurred on or about July 18, 1996. Thus the Plaintiff did not file the present claim until well over eight (8) years after the cause of action accrued, which is over five (5) years after the statute of limitations had run."Defendant's Mem at 5. Plaintiff counters that the "cause of action accrued from the time of discovery that Para-Chem was responsible for the injuries and interference with normal course of business." Plaintiff's Mem of Law in Support of Objection to Defendant's Motion to Dismiss ("Plaintiff's Mem") at 1. Thus the issue before the court is when Plaintiff's cause of action accrued. See Arnold 956 F Supp at 113 (" The dispute in this case centers on when the cause of action accrued, and whether defendants concealed the existence of the cause of action so as to toll the running of the limitations period.") Generally a cause of action for personal injury accrues and the statute of limitations begins to run at the time of injury. See Arnold 956 F. Supp at 113 Martin v Howard 784 A. 2d 291 299 (RI 2001) Renaud 662 A.2d at 714.However, in certain narrowly circumscribed factual situations, [the Rhode Island Supreme Court] has held that a statute of limitations will not begin to run until an injury or some wrongful conduct should have, in the exercise of reasonable diligence been discovered."Renaud 662 A.2d at 714-15 see also Arnold 956 F. Supp at 113 ("[T] he Rhode Island Supreme Court has recognized that for some factual settings, the operation of a 'discovery rule' serves to set this accrual date at some time beyond the actual date of injury.")Martin 784 A.2d at 299 (" [I]n some narrowly circumscribed situations however, when the fact of the injury is unknown to the plaintiff when it occurs, the applicable statute of limitations will be tolled and will not begin to run until in the exercise of reasonable diligence the plaintiff should have discovered theinjury or some injury-causing wrongful conduct.") (internal quotations marks and citation

omitted).The Rhode Island Supreme Court has limited the use of this discovey rule to cases involving medical malpractice see Wilkinson v Harrington 243 A.2d 745 747-48 753 (RI 1968) claims relating to improvements to real estate, see Lee v Morin 469 A.2d 358 359-60 (RI 1983) , and actions concerning drug product liability see Anthony v Abbott Labs 490 A.2d 43 44-48 (RI 1985).Plaintiff argues that the discovery rule is applicable in the instant matter. See Plaintiff's Mem at 10, see also Id at 8 (" Not until September 6, 2001, did the plaintiff become aware (discovery) that the product Magnum Plus Gold was the major source of styrene...") Complaint 15 ("On or about September 6, 2001 Plaintiff became fully aware that the carpet was just one factor in her personal injury, the other being the adhesive known as Magnum Plus Gold-4099.") Plaintiff acknowledges that she "brought a claim against Beaulieu, State Sales Robert Weisberg and Industrial Hygienist sent the Rhode Island Department of Health, and John Doe Cement Co alias [i]n 1999 within the required statute of limitations. Complaint 6. Plaintiff described the John Doe Carpet Cement company as " the unknown manufacturer of the cement used to install carpet in Plaintiff's offices." Appendix to Defendant's Motion to Dismiss (complaint filed in Civil Action No KC 99-542)("Defendant's App"). At 4 She argues that the failure to name Para-Chem in the previous action was due to the fact that the defendants there not only failed to inform Plaintiff who John Doe defendant was, but also denied that any cement was used in the installation of the carpet on July 18, 1996. See Complaint at 8-10; Plaintiff's Mem at 2, 5, 6, 9, 12. According to Plaintiff the defendants in the previous litigation " with wanton disregard purposefully and negligently withheld had concealed this information from the Plaintiff from July 19, 1999 when Plaintiff filed that action to on or about August 30, 2001 when defendant State Sales Inc handed Plaintiff information citing Para-Chem as the [d]efendant named in 1999 as John Doe Cement." Plaintiff's Mem at 2. On or about

August 30, 2001 during a deposition in the prior litigation counsel for State Sales gave Plaintiff information identifying the product Magnum Plus Gold -4099 as the adhesive which State Sales would have provided to the installer, although State Sales continued to deny that any adhesive was used in the installation of the carpet in Plaintiff's office. See Complaint at 11 Plaintiff's Mem at 2. Thereafter Plaintiff purchased a five gallon drum of Magnum Plus Gold-4099 and sent it for testing. See Complaint at 12 Plaintiff's Mem at 2. Plaintiff states that she received the results, which confirmed the presence of certain chemicals known as volatile organic compounds (VOC's) on or about September 6, 2001 See Complaint at 13, 15, Plaintiff's Mem at 2. Thus in Plaintiff's view the instant Complaint is not time-barred under RI Gen Laws 9-1-14 (b) " because it does meet the three year statute being filed on or about September 6, 2004, three years to date of receipt of Data Chem results on the composition of the product Magnum Plus Gold." Plaintiff's Mem at 2 The court rejects Plaintiff's argument for the following reasons. As an initial matter, the court notes that the RI Supreme Court has declined to exten the discovery rule to product liability actions other than those involving drug product liability. See Renaud 662 A.2d at 716 see also Arnold 956 F. Supp at 114 noting that "[i]n its most recent discussion of Anthony the RI Supreme Court left no doubt that the rule announced therein applies solely to drug product liability cases, and not to product liability or personal injury cases generally") citing Renaud. Although Plaintiff argues that "[a[s to the RI Supreme Court extending the discovery rule to only including 'certain types of property damage and drug product liability,' and to 'certain narrowly defined factual situations,' admittedly the RI Supreme Courts have never addressed the issue of carpet and glue toxicity as it pertains to the situation at hand." Plaintiff's Mem at 12 and that " only extending the rules to cover those of drug product liability underscores the very need of change needed in the RI

State Court Judicial System." id., the fact remains that the RI Supreme Court has declined Plaintiff's invitation to extend the discovery rule to product liability and personal injury cases in general see Arnold 956 F. Supp at 114. Moreover, the "discovery rule concerns the discovery that one has suffered an injury not the discovery of the identity of the party allegedly responsible for causing the injury." Renaud 662 A.2d at 715 see also id. (" Anthony does not stand for the proposition that the statute of limitations is tolled until a plaintiff should have discovered the identity of the drug manufacturer.":) The court agrees with Para-Chem statement that, "by the Plaintiff's own admission she knew of the alleged injury and the basis of the alleged cause of action in the summer of 1996." Defendant's Mem at 2. In the Superior Court complaint filed in 1999 Plaintiff alleged that " John Doe Cement is the unknown manufacturer of the cement used to install the carpet in Plaintiff's office Defendant's App at 4 "[o]n or about July 18, 1996, [d]efendants jointly and severally replaced carpet in Plaintiff's offices located at 65 Jefferson Boulevard Warwick RI "id. At 7 "[t]hereafter the rug and/or cement emitted strong noxious fumes to such a degree that Plaintiff's patients and Plaintiff herself complained of burning eyes,scratchy throats and dizziness after just a few minutes in the premises," id at 8. Plaintiff complained to both the landlord and to the [d]efendants stating that the rug and/or cement was defective in that it caused her, her employees and patients to become ill due to the fumes, id at 9; "[d]efendants failed and refused to do anything about the defective rug and/or cement," id at 10; " [o] n or about August 9, 1996 the noxious fumes were such that Plaintiff could no longer carry on her trade and profession in that premises," id at 11, and "Plaintiff vacated the premises and lost business due to having to vacate the premises." id at 12 She further alleged that the defendants jointly severally manufactured,sold, and installed the carpet and or cement in her offices that they had a duty to do so in a workmanlike

manner and that they were negligent in failing to do so. See id at 14-16 Plaintiff stated that [t]hrough the negligent and or improper application or use of the materials to install the rug the [d]efendants jointly and severally have chemically assaulted the Plaintiff, id at 19 and that as a result, " Plaintiff sustained physical injury pain and suffering and sustained a loss of business income and earning capaacity and expense for medical treatment. Id at 17 In the complaint filed in this court, Plaintiff includes the same or similar allegations regarding the installation of the carpet in her office on July 18, 1996 see Complaint at 3 the resulting "strong noxious vapors, id at 4 which the rug and/or cement emitted, see id and which caused Plaintiff and others to suffer " myriads of symptoms." id her complaints to her landlady State Sales Beaulieu the RI Department of Health that ' the rug and/or cement was defective in that it caused her her employees and patients to become adversely affected by the vapors, id at 5 and her relocation to different premises on August 15, 1996 with all of her belongings and loss of business which resulted therefrom see id at 7. Plaintiff notes that she brought a claim against various defendants, including John Doe Cement Co alia Complaint at 6 in 1999 " within the required statute of limitations id., and that those "claims were brought for these parties jointly and severally failed and refused to do anything about the defective rug and or cement, id. Additionally, she notes that the 2001 test results on the Magnum Plus Gold-4099 were consistent with previous test results on a " yellow mustard appearing substance found on the bottom of the carpet and carpet pad..." Id. 12 see also Plaintiff's mem at 2 stating that results of the testing of Magnum Plus Gold "clearly matched those of samples taken from the site of the carpet installation from August 15, 1996 and from May 10, 2001. The results also matched the chemicals determined to be the cause of acute and chronic personal injury to the Plaintiff as determined in 1996 and after May 2001." It is abundantly clear

to the court that not only was Plaintiff aware of her injury in July and August 1996 but she was also aware that the cement may have played a role in that injury. As Senior Judge Ronald R Legueux stated in Arnold In general once a plaintiff is aware that he or she has been injured by a product that plaintiff has enough information to commence a products liability action based on that injury. For the action to accrue a plaintiff does not need to be aware of all the facts supporting the claims,such as whether a particular component was defective or whether and how the design was flawed such factual investigation is the subject of the discovery process. Plaintiff's view which is essentially that a cause of action does not accrue until the investigation is complete would render the statute of limitations meaningless and ineffective." Arnold, 956 F. Supp at 117 see also Martin 784 A.2d at 300 rejecting plaintiff's argument that she did not appreciate the full nature and extent of her injuries at the time she first knew she had suffered harm; Renaud 662 A.2d at 716 (" In the case at bar, plaintiff was aware that she was injured within hours of her exposure to the acetic acid fumes. She experienced symptoms that caused her to seek emergency medical treatment on the very afternoon of her exposure to those fumes. Unlike Wilkinsons and Lee where the plaintiffs even if they had used reasonable diligence could not have discovered that they had suffered an injury untilafter the applicable statutes of limitation had expired, in the instant case plaintiff knew that she was injured almost simultaneously with the event precipitating the injury.). Anthony 490 A.2d at 45 ("The reasoning behind Wilkinson and Lee is that a person should have reasonable opportunity to become cognizant of an injury and it cause before the statute of limitations begins to run."Finally the RI Supreme Court in Renaud rejected an argument very similar to that of Plaintiff here -that the defendants in KC 99-542 " concealed the information necessary to fully and properly litigate the previous action, " Plaintiff's Mem at 6 namely the plaintiff was injured as a result

of inhaling fumes from acetic acid that had spilled at her place of employment, Landmark Medical Center. See Renaud 662 A.2d at 713. She sued Sigma Aldrich Corporation (" Sigma Aldrich") alleging that Sigma-Aldrich had manufactured and supplied the container holding the acetic acid involved in the incident. See id. Approximately four and a half years after the spill, documents were obtained pursuant to a subpoena which indicated that the supplier was Fisher Scientific Co. ("Fisher") not Sigma Aldrich. See Renaud 662 A.2d at 713 The Plaintiff moved to amend her complaint to add Fisher which motion was granted. See id. Fisher thereafter field a motion to dismiss pursuant to Fed R. Civ P 12 (b)(6) claiming that the three year statute of limitations against it had expired prior to its being added as a defendant. See id The motion was denied and Fisher appealed. See id. The Renaud court stated that: The plaintiff asserts that she exercised reasonable diligence in her efforts to identify the party that manufactured and supplied the container holding the acetic acid to Landmark. She alleges however, that her efforts to identify the manufacturer/supplier were frustrated by inter alia Landmark employees who told her that the manufacture of the container was Sigma Chemical; employees of Landmark's purchasing department that told her that invoices for the acetic acid were unavailable; and Landmark's workers' compensation insurance carrier who sent a subrogation notice to Sigma Chemical.Although certain of these contentions were disputed by the Sigma defendants, plaintiff nevertheless claims that she reasonably and detrimentally relied on information obtained from her employer, who misled her into believing Sigma Chemical to be the proper defendant. The plaintiff further suggests that Landmark employees and the two Sigma defendants may have even intentionally concealed the identity of the supplier of the container. Even if we accept each of plaintiff's allegations as true, they provide no basis for tolling the statute of limitations on a cause of action against Fisher. In order to toll the running

of the statute of limitations with respect to Fisher, there would have to be a showing that Fisher, the part asserting the statute of limitations defense attempted by fraud or misrepresentation to conceal the existence o fth cause of action. The plaintiff does not allege that Fisher in any way attempted to conceal the existence of the cause of action against it. Her claims of concealment are directed at only Landmark and possibly th two Sigma defendants Consequently plaintiff';s allegations even if accepted as true cannot serve to toll the statute of limitations on a cause of action against Fisher. Renaud 662 A.2d at 714 (internal citations and footnote omitted) The same is true in the instant matter. Plaintiff has made no allegations that Para-Chem concealed its identity from her. Accordingly, the court rejects Plaintiff's contention that because the actions of the defendants in KC99-542 precluded her from naming Para-Chem previously the statute of limitations as it pertains to Para-Chem should run from September 6, 2001. Statutes of limitation promoted certainty and finality and avoid stale claims,,,Roe v Gelineau 794 A.2d 476 485 R.I. 2002; see also Martin 784 A.2d at 299 noting that theory behind statute of limitations is that "even if one has a just claim it is unjust not to put the adversary on notice to defend within the period of limitation and that the right to be free of stale claims in time comes to prevail over the right to prosecute them." Based on the foregoing the court concludes that the discovery rule is inapplicable in these circumstances and that Plaintiff's cause of action against Para-Chem is barred by the three year statute of limitations.

Conclusion

For the reasons stated above, I recommend that the Motion to Dismiss be granted because the Complaint is time barred. Any objections to this Report and Recommendation must be specific and must be filed with the Clerk of Courts within ten days of its receipt. See Fed R Civ P. 72(b); D.R.I. Local R 32 Failure to file specific objections in a timely

manner constitutes waiver of the right to review by the district court and of the right to appeal the district court's decision. See United States v Valencia-Copete 792 F.2d 4,6 (1st Cir 1986) Park Motor Mart Inc v Ford Motor Co 616 F.2d 603 605 (1st Cir 1980).

/s/ David L. Martin
United States Magistrate Judge
April 11, 2005

APPENDIX D

August 19, 2002

Geraldine Mills, M.D.
191 Squantum Drive
Warwick, RI 02888

Dear Dr Mills:

I would like to thank you for you (r) timely participation in the confidential evaluation with Richard Seely, M.D. in February of 2002 of this year. As you are aware, Dr Seely found no psychopathology which would require further participation with the Physician Recovery Network. I have reviewed the material and concur with his assessment.
However, if we can be of further assistance with this or any other matter, please feel free to contact my staff at (800)888-8776.
Again, thank you for your cooperation.

Sincerely,
/s/ Raymond M. Pomm, M.D.
Medical Director
Consultant-Department of Health
Department of Business & Professional Regulation
RMP:dac

June 27, 2002

John B. Harwood, Esq
McKinnon & Harwood
1168 Newport Avenue
Pawtucket, RI 02861

RE: Geraldine Mills, M.D. (DOB 7/4/52)

Dear Mr Harwood:

At her request, I interviewed Geraldine Mills, M.D. at my office on June 25, 2002 for the purpose of evaluating her psychiatrically, including a complete mental status examination, for the purpose of determining whether or not she was fit to practice medicine from the point of view of her mental health.

My credentials are as follows: I am a psychiatrist, certified in Psychiatry by the American Board of Psychiatry and Neurology, a Fellow of the American Psychiatric Association, and a former Councilor and Past President of the Massachusetts Psychiatric Society. I am a Representative of the Massachusetts Psychiatric Society in the Assembly of the American Psychiatric Association. I am also a psychoanalyst and member of the Boston Psychoanalytic Society and the American Psychoanalytic Association, and I am a forensic psychiatrist and member of the American Academy of Psychiatry and Law. I was Associate Clinical Professor of Psychiatry at Tufts Medical School from 1976 to 1986 and Lecturer on Psychiatry at Harvard Medical School from 1986 to 1994 and from 2001 to the present. I was Chief of Inpatient and Day Hospital Psychiatry at the Faulkner Hospital in Boston from 1975 to 1994, where I continue on the staff. I was for four years Senior Psychiatrist at the Massachusetts Correctional Institution at Norfolk, have been a consultant to the Massachusetts Governor's Board of Pardons and Commutations, to the Parole Board and to the Probate Court of Plymouth County, Massachusetts as well as to the LEAA in Washington, D.C. I have served as an expert witness in most areas of forensic psychiatry both civil and criminal. I am a founding partner of the Las and Psychiatry Resource Center P.C. of Boston. I am now in full-time private practice of psychiatry, psychoanalysis and forensic psychiatry.

Dr Mills a native of Rhode Island, graduated from college at the University of Rhode Island. She completed two years of a PhD program in pathology at Case Western Reserve University and then earned a medical degree at Ross University in the Caribbean. Her internship and residencies were at several U.S. hospitals. Her first professional employment was at St Joseph's Hospital where she worked from 1989 to 1993. In 1992 she was embroiled in a dispute with her supervisor over the number of continuous hours she was required to work. As a result. According to her, the supervisor call the Rhode Island Hospital and denigrated her, so that she was persona non grata at that hospital. She was called psychotic and/or paranoid, despite the fact that she had no psychiatric history and was never so diagnosed by a psychiatrist, or even by a psychologist. DR Mills's license to practice medicine was formally taken away in Rhode Island in July 1901 (2001) after having been told to stop practicing medicine in 1999. In her long struggle to recover her license. She has been evaluated by four psychiatrist at the request of lawyers or of the Board of Registration in Medicine.All four found her fit to practice medicine, none found her psychotic. One diagnosed her as having an Obsessive-Compulsive Disorder (OCD) apparently without any clinical evidence. She was also given an MMPI psychological exam, which, while noting that she had tried to make herself look good in taking the exam-not surprising under the circumstances-also found no evidence of psychosis, paranoia, or OCD, nor did it identify any personality problems of consequence. It did find that her interpersonal relations were good. On mental status exam, she showed no evidence of any psychological or emotional abnormality, no thought disorder, no abnormality of speech or mood. On formal testing, there was no abnormality of any intellectual function. She was oriented to person place time and situation. Her immediate recall short-term and medium term memory were entirely normal. Her fund of knowledge ability to compare and contrast

concentrate calculate and think absolutely were entirely normal and consonant with her level of education. Her social judgment was also normal. I find no psychiatric reason whatsoever that would interfere with the capacity and ability of Geraldine Mills, M.D. to practice medicine including her specialty of pediatrics.

Sincerely,
/s/ Jerome Rogoff, M.D.

STATE OF RHODE ISLAND
KENT, SC

GERALDINE MILLS, M.D.
VS
STATE SALES, INC d/b/a KC99-542

ANSWER OF DEFENDANT STATE SALES, INC d/b/a
STATE RUG AND STATE RUG CLEANING

.....8. Defendant, State Sales, Inc denies that it had anything to do with manufacturing of carpet and/or cement, and ADMITS THAT A PORTION OF THE CARPETING WAS INSTALLED BY IT. (caps added for emphasis by appellant)

.....

STATE SALES, INC d/b/a
STATE RUG and STATE RUG CLEANING
By its attorney,
/s/ Stephen c. Mackie Esq /1202
Mackie & Reilly
681 Smith Street
Providence RI 02908
401-521-4100
401-274-5433 (fax)

CERTIFICATION

I certify that a copy of the within Answer was mailed to Geraldine Mills, M.D., Pro Se 191 Squantum Drive Warwick, R.I. 02888 on the 1st day of October 1999.

/s/ Theresa Micale(sp?)

State of Rhode Island
Kent, SC

Geraldine Mills, M.D.
vs CA NO 97-405
Gloria Nahabedian

Geraldine Mills M.D.
vs CA NO 99-542
State Sales, Inc et al

Defendant State Sales, Inc's Answers to Plaintiff's Interrogatories

.....

Interrogatory No 26 Please state in reference to the substance used in the installation of this carpet what the MSDS sheets were in regard to the composition of the substance, how long it takes to dry, how it is put down, where it is mixed, if so done in what formulation it is mixed, what if any other substances or materials, were used in installation and from whom purchased.

ANSWER: None used.

STATE SALES, INC
By /s/ Charles Muscatelli
Charles Muscatelli, Project Manager

Subscribed and sworn before me this 13th day of April 2001
Notary Public /s/ Catherine Snyde
My Commission Expires October 28, 2001

Geraldine Mills, M.D.
Vs CANO 97-405
Gloria Nahabedian

.....Interrogatory No 3 Please state as to whether you have any knowledge of how the carpet was installed on or about July 17-18, 1996, and if you have such knowledge please indicate whether you witnesses any padding, tack strip or glues or adhesives or cements employed.
ANSWER: Yes, I was present in the plaintiff's rented suite both days. As I recall, there was a pad used, and tack strips. I did not observe any glue or adhesives being used.

Gloria Nahabedian
Defendant by her attorney,
/s/John W. Kershaw

August 30, 2001
Via Facsimile 9410)322-1700
Judith I Scott, Esq
Scott& scott P.C.
45 Cove Road
Westerly, R.I. 028910
RE: Mills v State Sales, Inc et al
Our File No 600-510P
Dear Ms Scott

At your request I am writing to clarify a question you had regarding my providing you with a copy of the MSDS sheet concerning water base adhesive. It is still the position of my client that no adhesive was used in this installation. Any adhesive on the floor in the office space in question would be from the prior rug that was in fact glued installation. The MSDS sheet for the water base adhesive represents the glue that would have been used had the installation in question been glued. This is the adhesive that State Sales would have

provided to the installer. I provided the MSDS sheet to show that even if adhesive was used, it was a non-toxic adhesive. Dr Reed agreed to this in his deposition based on the absence of any CAS number. He also agreed that many water base adhesives are non-toxic.

I hope this clarifies the question you had. If I can be of any further assistance, let me know.

/s/ Paul Reynolds

Kent Sc Superior Court

Geraldine Mills, M.D.
v CA NO K97-405
Gloria Nahabedian

Geraldine Mills
v CANO K99-542
State Sales, Inc et al

MEMORANDUM IN SUPPORT OF OBJECTION TO DEFENDANTS' MOTION TO EXCLUDE EXPERTS

.....

Kenneth Reed, PhD: Dr Reed did not have the advantage of having the chemical breakdown of the carpet available for his deposition (added for emphasis by appellant- nor the glue composition) Dr Reed has developed a model based on EPA testing and an accepted mathematical formula developed by Dr Karl Weil relative to evaporation in order to provide a means for determining the probable exposure to environmental gases in cases such as the instant matter in which valid testing was not performed at the time of insult. Dr Reeds model has been submitted for publication where it will be subject to critique and peer review. However, although the journal treatise describing the model and method currently is awaiting publication, the underlying foundational formulae and methods

have been subjected to publication and peer review. Dr Reed has been " qualified" in prior Daubert and Daubert syle hearings in other cases. .....

Cases 1) Farrell et al v. connetti Trailer Sales, Inc et al 727 A.2d 183 (RI 1999) In deciding to allow Plaintiffs to introduce evidence of repairs where a motor home was not available for inspection, the Farrell court cited, with approval, Sampson v Marshall Brass Co 661 a.2d 971 (RI 1995) "The court concluded that 'in the absence of a record exploring the reasons for the inability of the plaintiffs in this case to produce the missing [product], we are of the opinion that rule 37(b)(2) does not permit such drastic consequences as dismissal with prejudice.') both Farrell and Sampson are products liability cases in which the defective product could not be supplies as in the instant case. 2) Tancrelle v Friendly Ice Cream Corporation 756 A.2d 744 RI 2000 In discussing the spoilation of evidence instruction the Tancrelle court stated that " This court has held that although a showing of bade(bad) faith may strengthen the inference of spoilation such a showing is not essential citing Farrell (supra with approval.).....

Conclusion: For all the above, Plaintiff prays this Honorable Court permit her expert to testify and provide the jury with the opportunity to assess the available evidence in this very unusual case of first impression.

Respectfully submitted, Plaintiff

By attorneys, /s/ Judith I Scott # 4590

KENNETH P. REED Ph.D., C.I.H.

LEGAL ASSISTANCE PROVIDED

PLAINTIFF OUTCOMES

YEAR	FIRM ATTORNEY ACTION	OUTCOME
2001	Glenn Goodman Attorney	
	Anello and Uhlman vs Shaw	Settled
	Personal injury,chemicals from carpeting	
2000	R Hymel Attorney	
	Schxenayder vs American Freightways	Settled
	Personal injury chemical spill	
2000	D Schmitt Attorney	
	Shah vs Allstate Insurance et al	Settled
	property damages	
2000	S Franzen attorney	
	Horn Estate vs Highlands Nursing Home	Trial
	Jury awarded $700,000.00	
	wrongful death	
1999	J Carter attorney	
	McGrath vs Church of God et al	Settled
	Carpet installation injury	
1998	R Lovesky attorney	
	Editha Benton vs Bausch and Lomb	
	personal injury work	Settled
1998	JB Meade attorney	
	McCarty vs Tuflex	
	personal injury carpet	Settled
1998	S Eaton attorney	
	McAllester vs Mohawk Carpeting	Settled
	personal injury work	
1997	J Speer attorney	
	Cauberreaux vs DuPont	
	awarded $ 4,200,000.00	Trial
	personal injury carpet	

settled 1995 case of personal injury carpet Shutt vs JPS et al